

**FILED**

APR 11 2011

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROLAND ADAMS,

Defendant.

CR. NO. S-02-0257 EJG  
CIV. NO. S-10-0841 EJG

ORDER DENYING MOTION TO  
VACATE, SET ASIDE OR CORRECT  
SENTENCE

Defendant, a prisoner proceeding pro se, has filed a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. After reviewing the record, the documents filed in connection with the motion, and applicable law, the court has determined that the matter may be decided without a hearing because the files and records of the case affirmatively show the factual and legal invalidity of defendant's arguments. Shah v. United States, 878 F.2d 1156, 1158-59 (9<sup>th</sup> Cir. 1989). For the reasons set forth below, the motion is DENIED.

Background<sup>1</sup>

Defendant was indicted almost 9 years ago, on June 20, 2002, on multiple counts of wire fraud and money laundering and two counts of criminal forfeiture ("fraud" indictment). Later that year, an additional indictment was filed charging defendant with unlawful procurement of naturalization and one count of making a false statement ("immigration" indictment). The cases were related but not consolidated.

On August 18, 2003 defendant pled guilty to two of the counts in the fraud indictment. The plea was pursuant to a plea agreement in which, among other things, defendant waived a jury trial on the forfeiture counts and waived rights to appeal and collateral attack of the convictions and sentence. In exchange, the government agreed to dismiss the remaining counts in the indictment. Ultimately, agreement was reached on all items listed in the forfeiture counts with the exception of defendant's residence. Following a bench trial, the court issued an order forfeiting the real property, finding the majority of the down payment came from proceeds directly traceable to defendant's fraud.

Shortly thereafter, defendant moved to withdraw his guilty plea, contending he had received ineffective assistance of

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<sup>1</sup> Due to its age and the litigiousness of defendant, this case has a lengthy procedural history which has been documented in previous orders of the court. A condensed version is supplied here.

1 counsel, rendering his pleas involuntary and uninformed. An  
2 evidentiary hearing was held March 19, 2004. The court denied  
3 the motion April 9, 2004. An order incorporating the court's  
4 oral analysis, was filed April 28, 2004. Defendant proceeded to  
5 trial April 12, 2004 on the immigration indictment and was  
6 convicted on both counts. The fraud and immigration cases were  
7 consolidated for sentencing and defendant was sentenced in both  
8 cases on March 11, 2005 to an aggregate term of 97 months  
9 imprisonment and three years supervised release. In addition,  
10 restitution of \$1.2 million was imposed in the fraud case.  
11 Defendant appealed the convictions and sentence in both cases.

12 In a memorandum opinion filed June 29, 2006, the Ninth  
13 Circuit affirmed defendant's conviction and sentence in full,  
14 with one exception. The appellate court remanded the forfeiture  
15 order, finding that the district court erroneously considered as  
16 tainted proceeds funds which were acquired outside the time  
17 period of the indictment. Following a hearing, the district  
18 court again found the real property forfeitable, as proceeds  
19 directly traceable to defendant's fraud, and entered an amended  
20 judgment.

21 Defendant's appeal after remand was denied September 30,  
22 2009. His petition for certiorari was denied February 22, 2010.  
23 The instant motion was filed April 8, 2010, purporting to raise  
24 15 claims.

25 ///

Discussion

**A. Waiver of collateral attack**

Pursuant to the plea agreement defendant waived his rights to collaterally attack his convictions and sentence. See Plea Agreement, attached as Exhibit A, 7:21-25. The plea agreement is clear in its expression of the waiver and defendant cannot legitimately contend he did not know its meaning where the agreement bears his signature, and he was specifically questioned by the court about his understanding of the waiver during the plea colloquy. See Transcript of Rule 11 proceedings, attached as Exhibit B.

Defendant's waiver of his appellate rights is enforceable if the waiver encompasses the grounds raised in the challenge, and is knowingly and voluntarily made. United States v. Joyce, 357 F.3d 921, 922-23 (9<sup>th</sup> Cir. 2004) (upholding waiver of appellate rights); United States v. DeJarnette, 63 Fed. Appx. 284 (9<sup>th</sup> Cir. 2003) (upholding waiver of appeal and collateral attack).

The waiver signed by defendant is a broad one, giving up "any right he may have to bring a post-conviction attack on his conviction or his sentence. He specifically agrees not to file a motion under § 2255 or § 2241 of Title 28 of the United States Code attacking his conviction or sentence." Plea Agreement, Exhibit A, 7:21-25 (emphasis added).<sup>2</sup> This broad waiver

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<sup>2</sup> It appears the government mistakenly included language from a plea agreement in another case in its opposition brief. Compare Govt's opposition 2:4-10 *with* Memorandum of

1 encompasses all of the issues raised in defendant's motion, with  
2 the possible exception of claims 7 and 8, which raise the issue  
3 of ineffective assistance of counsel related to the plea process.  
4 "We doubt that a plea agreement could waive a claim of  
5 ineffective assistance of counsel based on counsel's . . .  
6 inducement of the defendant to plead guilty or accept a  
7 particular plea bargain." United States v. Pruitt, 32 F.3d 431,  
8 433 (9<sup>th</sup> Cir. 1994). In other words, a claim that challenges  
9 whether the waiver was knowing, intelligent and voluntary due to  
10 alleged ineffectiveness of counsel is not foreclosed since the  
11 validity of the waiver itself is called into question. See  
12 Washington v. Lampert, 422 F.3d 864, 871 (9<sup>th</sup> Cir. 2005). See  
13 also United States v. McWhorter, 2010 WL 2822819 \* 4 (E.D. Cal.  
14 2010).

15 **B. Claims 7 and 8**

16 In his seventh claim, defendant argues that Matthew Bockman,  
17 one of numerous attorneys who represented defendant during the  
18 multi-year span of these cases, both misadvised and failed to  
19 advise him about the immigration consequences of his plea.  
20 Specifically, defendant states that he was assured by counsel  
21 that the factual basis of the fraud case would not be used  
22 against him in the immigration case, that the immigration case  
23 would be dropped, and that defendant would not be subject to

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Plea Agreement, docket number 41, 7:13-20 (attached as Exhibit A to this order).

1 deportation if he pled guilty in the fraud case. See Defendant's  
2 declaration, attached to § 2255 motion. In the eighth claim  
3 defendant contends Mr. Bockman failed to investigate the facts of  
4 the case, the effect of which caused defendant to plead guilty.

5 These claims are not new. Each of their component parts was  
6 raised in defendant's motion to withdraw plea and his declaration  
7 in support of the motion, filed in October of 2003. See Docket  
8 entries 55 - 58. Defendant was given the opportunity to litigate  
9 all of these issues during an evidentiary hearing on the motion  
10 which was held in March of 2004. See Transcript of hearing,  
11 docket entry 212. However, defendant withdrew his declaration  
12 and decided not to testify. This left only one issue before the  
13 court: whether Mr. Bockman's failure to advise defendant that the  
14 factual basis for his pleas in the fraud cause could be used as  
15 evidence in the immigration case, was a basis for withdrawal of  
16 his pleas of guilty. See Transcript of hearing on motion to  
17 withdraw plea, attached as Exhibit C, 2:14-25.

18 Defendant, through counsel, argued that Mr. Bockman's  
19 actions and omissions constituted ineffective assistance of  
20 counsel, rendering the guilty pleas neither knowing or voluntary  
21 because they were entered without an awareness of their full  
22 consequences. During the hearing Mr. Bockman was extensively  
23 questioned by the court, by then-counsel Richard Dangler, and by  
24 Assistant U.S. Attorney Camil Skipper. The court specifically  
25 found that failure to inform the defendant that the factual basis  
26

1 could be used as evidence in the immigration case was a  
2 collateral consequence of the guilty pleas. The court also found  
3 that Mr. Bockman's "inaction" did not constitute ineffective  
4 assistance of counsel because it did not fall below an objective  
5 standard of reasonableness, nor did defendant offer any evidence  
6 of prejudice, thereby failing to meet either prong of Strickland  
7 v. Washington, 466 U.S. 668 (1984).

8 Now, seven years later, defendant is attempting to revive  
9 the issue in two ways. First, he relies on the recent Supreme  
10 Court Padilla v. Kentucky decision in which the court held that  
11 effective assistance of counsel requires that counsel inform his  
12 client of the immigration consequences of his plea. Padilla v.  
13 Kentucky, 130 S.Ct. 1473, 1486 (2010). Second, defendant  
14 attempts to challenge both the evidence offered at the March 2004  
15 hearing and the court's findings by submitting his declaration,  
16 thereby injecting "evidence" he previously chose to abandon. See  
17 Declaration of Roland Adams, attached as Exhibit C to § 2255  
18 motion.

19 Neither the Padilla decision nor defendant's recent  
20 declaration revive this claim, decided on the merits seven years  
21 ago.<sup>3</sup> In Padilla the Supreme Court held that when the deportation

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22  
23 <sup>3</sup> The Padilla case was decided March 31, 2010, five weeks after defendant's conviction  
24 became final on direct appeal. See Griffith v. Kentucky, 479 U.S. 314, 321 n.6 (1987) (case  
25 becomes final when petition for certiorari has been denied.) Whether it can be retroactively  
26 applied to cases on collateral review, like defendant's, is an open question about which the courts  
that have looked at the issue have not reached consensus. Some consider it a new rule  
announcing a new legal principle and thus not applicable to cases on collateral review, while



1 consequences of a plea are clear, an attorney's failure to so  
2 advise his client constitutes deficient performance under the  
3 performance prong of Strickland. Padilla v. Kentucky, 130 S.Ct.  
4 1473, 1483 (2010). On the other hand, there are numerous  
5 situations in which the immigration consequences are unclear or  
6 uncertain. "When the law is not succinct and straightforward...,  
7 a criminal defense attorney need do no more than advise a  
8 noncitizen client that pending criminal charges may carry a risk  
9 of adverse immigration consequences." Id.

10 Here, the consequences were neither clear or certain.  
11 First, defendant was not a "noncitizen". In fact, he was a  
12 citizen, albeit a naturalized one. Second, no evidence has been  
13 presented to suggest that defendant's plea in the fraud case  
14 would compromise his citizenship. At best is the testimony of  
15 Mr. Bockman during the hearing that he believed his failure to  
16 advise defendant that the factual basis in the fraud plea could  
17 be used against him in the immigration case constituted a fair  
18 and just reason to withdraw the plea. However, the court  
19 disagreed, finding counsel's representation objectively  
20 reasonable. Defendant's motion for post-conviction relief, while  
21 filed six years after the court's initial ruling, add nothing

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23 others maintain that it is merely an application of an established rule of law. Compare Miller v.  
24 State, 196 Md.App. 658, 11 A.3d 340 (Ct. App. Md., filed Dec. 29, 2010) (no retroactive  
25 application) with United States v. Hubenig, 2010 WL 2650625 (E.D. Cal, filed July 1, 2010)  
(retroactive application). Because the court finds Padilla substantively inapplicable to the facts  
of the case, it need not reach the procedural question of retroactivity.



1 new. Accordingly, defendant has not satisfied the performance  
2 prong of Strickland.

3 Alternatively, were the court to find that counsel's  
4 inaction fell below an objective standard of reasonableness,  
5 defendant has not shown prejudice, the necessary second prong of  
6 Strickland. To demonstrate prejudice in the context of a guilty  
7 plea, the burden is on defendant to establish "a reasonable  
8 probability that, but for counsel's errors, he would not have  
9 pleaded guilty and would have insisted on going to trial." Hill  
10 v. Lockhart, 474 U.S. 52, 59 (1985).

11 Defendant purports to answer that question with the bare-  
12 bones assertion in his 2010 declaration that, absent Mr.  
13 Bockman's affirmative representation that the immigration case  
14 would be dropped and that defendant would not be deported, he  
15 would not have pled guilty. Declaration of Roland Adams  
16 (attached to § 2255 motion), ¶ 4. Unfortunately for defendant, he  
17 cannot now contradict the testimony of Mr. Bockman when he had a  
18 full and fair opportunity to both cross-examine as well as put  
19 forth his own evidence yet chose not to do so seven years ago. In  
20 any event, an unsupported assertion that he would have gone to  
21 trial is insufficient to constitute prejudice.

22 Nor has defendant offered any evidence to support the  
23 unsubstantiated supposition in his eighth claim that counsel  
24 failed to investigate the facts of the case. Accordingly, he has  
25 failed to establish a reasonable probability that but for  
26

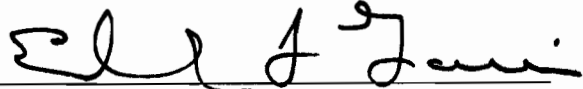
1 counsel's inaction, defendant would have proceeded to trial.

2 Conclusion

3 Based on the foregoing, defendant's motion to vacate, set  
4 aside or correct his sentence is DENIED.

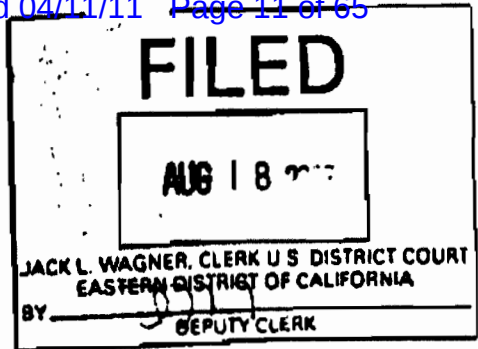
5 IT IS SO ORDERED.

6 Dated: 4/11/11



EDWARD J. GARCIA, JUDGE  
UNITED STATES DISTRICT COURT

1 MCGREGOR W. SCOTT  
United States Attorney  
2 BENJAMIN B. WAGNER  
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5



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7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,  
11 Plaintiff,  
12 v.  
13 ROLAND ADAMS,  
14 aka Peter Brown,  
15 aka Harold Whiteker,  
16 Defendant.

Case No. CR. S-02-257 EJJ

MEMORANDUM OF PLEA AGREEMENT  
AND AGREEMENT CONCERNING  
TRIAL ON COUNTS NINE AND TEN

17 I. INTRODUCTION

18 A. Scope of Agreement: Indictment 02-257 charges the  
19 defendant with conspiracy to commit mail fraud and wire fraud,  
20 conspiracy to launder money, one substantive count of money  
21 laundering, and five substantive counts of wire fraud, in  
22 violation of Title 18, United States Code, Sections 371, 1956(h),  
23 1957, and 1343. Indictment 02-257 also provides for criminal  
24 forfeiture of all property derived from proceeds traceable to any  
25 offense constituting "specified unlawful activity," pursuant to  
26 Title 18, United States Code, Section 981(a)(1)(C).

27 This document contains the complete Plea Agreement between  
28 the United States Attorney's Office for the Eastern District of

41  
EXHIBIT A

1 California ("the government") and the defendant regarding  
2 indictment 02-257. This Plea Agreement is limited to the United  
3 States Attorney's Office for the Eastern District of California  
4 and cannot bind any other federal, state, or local prosecuting,  
5 administrative, or regulatory authority.

6       **B. Count Not a Party:** The Court is not a party to this  
7 Plea Agreement. Sentencing is a matter solely within the  
8 discretion of the Court, the Court is under no obligation to  
9 accept any recommendations made by the government, and the Court  
10 may, in its discretion, impose any sentence it deems appropriate  
11 up to and including the statutory maximum stated in this Plea  
12 Agreement. If the Court should impose any sentence up to the  
13 statutory maximum, the defendant cannot, for that reason alone,  
14 withdraw his guilty plea, and he will remain bound to fulfill all  
15 of his obligations under this Plea Agreement. The defendant  
16 understands that neither the prosecutor, defense counsel, nor the  
17 Court can make a binding prediction or promise regarding the  
18 sentence he will receive.

19                   **II. DEFENDANT'S OBLIGATIONS**

20       **A. Guilty Pleas:** The defendant will plead guilty to count  
21 one charging conspiracy to commit mail and wire fraud, in  
22 violation of Title 18, United States Code, Section 371, and count  
23 seven charging conspiracy to launder money, in violation of Title  
24 18, United States Code, Section 1956(h). The defendant agrees  
25 that he is in fact guilty of these charges and that the facts set  
26 forth in the Factual Basis attached hereto as Exhibit A are  
27 accurate.

28 ///

1       **B. Forfeiture:** The defendant agrees to waive his right to  
2 a jury trial on counts nine and ten (criminal forfeiture) of  
3 indictment 02-257.

4       **C. Internet Domain Names:** The defendant agrees to allow  
5 the government immediate access to and control of the Internet  
6 domain names Afribankcorp.com, Bancofafrica.com, and  
7 Bancofeasterncarribean.com [sic].

8       **D. Fine:** The defendant agrees to pay any criminal fine  
9 ordered by the Court following a presentence report  
10 investigation.

11       **E. Restitution:** The defendant agrees to pay restitution.  
12 The defendant understands that the preliminary restitution figure  
13 (as calculated by the government) is \$2,124,726.82, but that the  
14 court cannot determine the final restitution figure until after  
15 the presentence report investigation.

16       **F. Special Assessment:** The defendant agrees to pay a  
17 special assessment of \$200 at the time of sentencing by  
18 delivering a check or money order, payable to the United States  
19 District Court, to the United States Probation Office immediately  
20 before the sentencing hearing.

21                   **III. THE GOVERNMENT'S OBLIGATIONS**

22       **A. Recommendation:** The government will recommend that the  
23 defendant be sentenced at the low end of the applicable guideline  
24 range, as determined by the United States Probation Office, for  
25 the offenses charged in counts one and seven of indictment 02-  
26 257.

27       **B. Acceptance of Responsibility:** The government will not  
28 oppose a two-level reduction in the defendant's offense level for

1 acceptance of responsibility so long as the defendant  
2 demonstrates acceptance of responsibility and the probation  
3 officer finds that the defendant has accepted responsibility.

4 C. Dismissal of Charges: The government will move to  
5 dismiss counts two through six and count eight of indictment 02-  
6 257 at the time of sentencing.

7 IV. NATURE AND ELEMENTS OF CHARGE

8 The defendant has read the charges against him and the  
9 charges have been explained to him by his attorney. The elements  
10 of the offense charged in count one, conspiracy to commit mail  
11 fraud and wire fraud, in violation of Title 18, United States  
12 Code, Section 371, are:

13 First, beginning no later than February 26, 2001, and ending  
14 on or about June 17, 2002, there was an agreement between two or  
15 more persons to commit wire fraud and mail fraud;

16 Second, the defendant became a member of the conspiracy  
17 knowing of at least one of its objects and intending to help  
18 accomplish it; and

19 Third, one of the members of the conspiracy performed at  
20 least one overt act for the purpose of carrying out the  
21 conspiracy.

22 The elements mail fraud and wire fraud are:

23 First, the defendant made up a scheme or plan for obtaining  
24 money by making false statements, with all jurors agreeing on at  
25 least one particular false statement that was made;

26 Second, the defendant knew that the statements were false;

27 Third, the statements were material, that is they would  
28 reasonably influence a person to part with money;



1 Fourth, the defendant acted with the intent to defraud; and  
2 Fifth, the defendant used, or caused to be used, the mails  
3 and the wires to carry out or attempt to carry out an essential  
4 part of the scheme.

5 The elements of the offense charged in count seven,  
6 conspiracy to launder money, in violation of Title 18, United  
7 States Code, Sections 1956(h) and 1956(a)(2)(B)(i), are:

8 First, beginning no later than February 26, 2001, and ending  
9 on or about June 17, 2002, there was an agreement between two or  
10 more persons to transport or transmit monetary instruments or  
11 funds to a place in the United States from or through a place  
12 outside the United States; and

13 Second, that the defendant knew that the monetary  
14 instruments and funds involved in the transportation,  
15 transmission and transfer represented the proceeds of some form  
16 of unlawful activity, and he also knew that such transportation  
17 or transmission was designed in whole or in part to conceal an  
18 disguise the nature, location, and source, ownership and control  
19 of the proceeds of specified unlawful activity (to wit, wire  
20 fraud and mail fraud in violation of Title 18, United States  
21 Code, Sections 1341 and 1343).

#### 22 V. MAXIMUM SENTENCE

23 The maximum sentence that the Court can impose on count one  
24 is five years imprisonment, a three-year term of supervised  
25 release, a fine of \$250,000, and a \$100 mandatory special  
26 assessment. The maximum term of imprisonment that the Court can  
27 impose on count seven is 20 years imprisonment, a three-year term  
28 of supervised release, a fine of \$500,000 (or, in the



1 alternative, not more than twice the amount of the originally  
2 derived property involved in the transportation), and a \$100  
3 mandatory special assessment. The total term of imprisonment the  
4 Court can impose is 25 years imprisonment, with a total fine of  
5 \$750,000 (or \$250,000 plus the alternative fine prescribed for  
6 count seven), a \$200 mandatory special assessment, and a three-  
7 year term of supervised release. Should the defendant violate  
8 any of the terms of supervised release, he could be returned to  
9 prison for an additional two years.

#### 10 VI. SENTENCING DETERMINATION

11 The defendant understands that a sentencing guideline range  
12 for this case will be determined by the Court pursuant to the  
13 Sentencing Reform Act of 1984, 18 U.S.C. §§ 3551-3742 and 28  
14 U.S.C. § 991-998. The defendant further understands that the  
15 Court will impose a sentence within that guideline range, unless  
16 the Court finds that there is a basis for departure (either above  
17 or below the range) because there exists an aggravating or  
18 mitigating circumstance of a kind or to a degree not adequately  
19 taken into consideration by the Sentencing Commission in  
20 formulating the Guidelines.

#### 21 VII. REMAINING CHARGES

22 Counts nine and ten of indictment 02-257, which charge  
23 criminal forfeiture, will be tried to the Court, without a jury,  
24 on a date convenient to the Court following the entry of  
25 defendant's guilty pleas to counts one and seven and prior to  
26 sentencing in this matter. The defendant acknowledges that this  
27 plea is not a conditional plea, and that he will have no right to  
28 withdraw his plea regardless of the outcome of further

1 proceedings concerning the forfeiture allegations in indictment  
2 02-257. The defendant further acknowledges that he will have no  
3 right to withdraw his plea regardless of the outcome of  
4 proceedings arising from indictment 02-560.

5 **VIII. WAIVERS**

6 **A. Waiver of Constitutional Rights:** The defendant  
7 understands that by pleading guilty he is waiving the following  
8 constitutional rights: (a) to plead not guilty and persist in  
9 that plea if already made; (b) to be tried by a jury; (c) to be  
10 assisted at trial by an attorney, who would be appointed if  
11 necessary; (d) to confront and cross-examine witnesses against  
12 him; and (e) not to be compelled to incriminate himself.

13 **B. Waiver of Appeal and Collateral Attack:** The defendant  
14 understands that the law gives him a right to appeal his  
15 conviction and sentence. He agrees as part of his plea, however,  
16 to give up this right. He specifically gives up his right to  
17 appeal any fine and order of restitution the Court may impose and  
18 agrees that an order of restitution that exceeds the amount  
19 stated in this plea agreement will not provide grounds for  
20 appeal.

21 The defendant also gives up any right he may have to bring a  
22 post-conviction attack on his conviction or his sentence. He  
23 specifically agrees not to file a motion under § 2255 or § 2241  
24 of Title 28 of the United States Code attacking his conviction or  
25 sentence.

26 If the defendant's conviction on the counts to which he is  
27 pleading guilty is ever vacated at the defendant's request, or  
28 his sentence is ever reduced at his request, the government shall

1 have the right (1) to prosecute the defendant on the counts to  
2 which he pleaded guilty; and (2) to file any new charges that  
3 would otherwise be barred by this Agreement. The decision to  
4 pursue any or all of these options is solely in the discretion of  
5 the United States Attorney's Office. By signing this Agreement,  
6 the defendant agrees to waive any objections, motions, and  
7 defenses he might have to the government's decision. In  
8 particular, he agrees not to raise any objections based on the  
9 passage of time with respect to such counts including, but not  
10 limited to, any statutes of limitations or any objections based  
11 on the Speedy Trial Act or the Speedy Trial Clause of the Sixth  
12 Amendment.

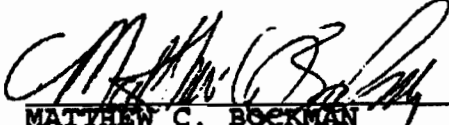
13 **IX. ENTIRE PLEA AGREEMENT**

14 Other than this Plea Agreement, no agreement, understanding,  
15 promise, or condition between the government and the defendant  
16 exists, nor will such agreement, understanding, promise, or  
17 condition exist unless it is committed to writing and signed by  
18 the defendant, counsel for the defendant, and counsel for the  
19 United States.

20 **X. APPROVALS AND SIGNATURES**

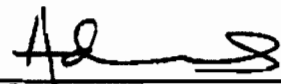
21 **A. Defense Counsel:** I have read this Plea Agreement and  
22 discussed it fully with my client. The Plea Agreement accurately  
23 and completely sets forth the entirety of the agreement. I  
24 concur in my client's decision to plead guilty as set forth in  
25 this Agreement.

26 DATED: 8/18/3

  
MATTHEW C. BOCKMAN  
Attorney for defendant  
Roland Adams

1        **B. Defendant:** I have read this Plea Agreement and  
2 carefully reviewed every part of it with my attorney. I  
3 understand it, and I voluntarily agree to it. Further, I have  
4 consulted with my attorney and fully understand my rights with  
5 respect to the provisions of the Sentencing Guidelines which may  
6 apply to my case. No other promises or inducements have been  
7 made to me other than those contained in this Agreement. In  
8 addition, no one has threatened or forced me in any way to enter  
9 into this Plea Agreement. Finally, I am satisfied with the  
10 representation of my attorney in this case.

11  
12 DATED: 08-18-03

  
\_\_\_\_\_  
ROLAND ADAMS  
Defendant

14        **C. Attorneys for the United States:** I accept and agree to  
15 this Plea Agreement on behalf of the government.

16 Date: 18 August 2003

Respectfully submitted,  
MCGREGOR W. SCOTT  
United States Attorney

19  
20 By:   
\_\_\_\_\_

CAMILLE A. SKIPPER  
Assistant U.S. Attorney



**EXHIBIT A****FACTUAL BASIS**

At all times relevant to the conduct alleged in the indictment, defendant ROLAND ADAMS lived and worked in Sacramento, State and Eastern District of California. Beginning no later than approximately February 2001, ADAMS conspired with others in Nigeria, South Africa, and Canada, among other places, to operate an advance fee fraud scheme for the purpose of defrauding victims from around the world, including the United States.

The advance fee fraud scheme was perpetrated, in part, through the mailing of solicitation letters from the Eastern District of California, purportedly from officials of African governments or government agencies. The solicitation letters sought the victims' assistance in diverting millions of dollars held in a fictitious investment account or trust to the private use of the African officials and their associates. In exchange for the victims' agreement to receive the diverted funds and forward the majority to the official, the victims were promised a substantial portion of the diverted funds. During the operation of the scheme, victims were required to provide personal information to the defendant and his co-conspirators, including banking information. The scheme purportedly involved the transfer of the diverted funds through certain offshore financial institutions directly to the victims' bank accounts.

On or about May 7, 2001, ADAMS caused such a solicitation letter, purportedly from a senior employee of the South African Ministry of Energy and Mineral Resources in Johannesburg, South Africa, to be mailed from Sacramento to victims in the State of Washington.

The defendant registered the Internet domain names Afribankcorp.com, Bancofafrica.com, and Bancofeasterncarribean.com [sic]. On or about April 5, 2001, ADAMS, using the alias Peter Brown, visited a web site design company in Sacramento to obtain a designer's professional services to create web sites for the fictitious offshore banks.

These banks did not exist apart from the web sites, however, each bank web site included a "Foreign Payment Verification" link. When activated, victims were prompted to enter a unique "Authorization Code" by which they could access information about the account holding the promised funds. The "Foreign Payment Verification" page detailed the amount of money purportedly designated for transfer to that victim upon the payment of certain fees. These web sites were maintained by ADAMS, and on or about May 22, 2001, ADAMS accessed the Afribankcorp.com web site in an administrator capacity, via an Internet account opened in the name of Sam Kigali.

///

1 The fees assessed, often called the "marginal fluctuation  
2 difference," or "MFD," typically amounted to 1% of the total fund  
3 transfer amount. Some victims were required to send the MFD fee  
4 to specified individuals, sometimes "Boma Jones" in South Africa  
5 or "Stephen Taylor" in Canada, before the purported offshore  
6 banks could release the funds. Other victims were instructed to  
7 transfer the MFD fees to bank accounts in Cyprus, Canada, and  
8 other foreign countries. Victims often sent several payments of  
9 lesser amounts attempting to pay the entire MFD, which could be  
10 anywhere from several thousands to several hundred thousand  
11 dollars. In this way, the web sites were used to further the  
12 money laundering conspiracy.

13 Victims received these instructions for payment of the fees,  
14 as well as updates on the progress of the release of the  
15 fictitious funds, by e-mail. Victims also contacted Afribank  
16 using a Los Angeles-area telephone number, calls which were  
17 automatically forwarded to ADAMS' mobile telephone.

18 A portion of the funds and monetary instruments sent to  
19 South Africa, Canada, or bank accounts around the world for  
20 payment of the fees (the proceeds of the fraud scheme) were later  
21 forwarded by the defendant's co-conspirators abroad to Sacramento  
22 by Western Union wire transfer or other means for ADAMS' personal  
23 use. The transfer transactions involved multiple wire transfers  
24 and private shipments conducted in a manner so as to conceal the  
25 nature of the funds as fraud proceeds, and to conceal the origin  
26 of the funds. With regard to funds sent to South Africa, a  
27 review of Western Union money transfer records details numerous  
28 wire transfers from various individuals to "Boma Jones" totaling  
approximately \$145,000. The records also document 60 wire  
transfers to ADAMS between October 2000 and August 2001 totaling  
almost \$90,000, most originating from South Africa (but one  
originating from Inglewood, California, and 10 from Canada).  
Western Union records document thousands of dollars in wire  
transfers from South Africa to the defendant in various names  
from similar addresses.

Videorec

29 The defendant knew the funds and instruments were proceeds  
30 from the fraud scheme and accepted them as payment for his  
31 participation in the scheme. The defendant also knew the funds  
32 were routed in a manner meant to conceal the nature and origin of  
33 the funds. The defendant, personally and through his business,  
34 Adams Business Services, received the funds and monetary  
35 instruments from his co-conspirators abroad and deposited a large  
36 portion of them in a U.S. Bank account numbered 153490192959, in  
37 the name of Roland Adams and Adams Business Services, in  
38 Sacramento.

39 The web sites for the fictitious banks were maintained by  
40 the defendant using his Sony Vaio laptop computer, model #PCG-  
41 9B3L, with hard drive, DVD-Rom, CD-RW, 3.5 inch floppy drive and  
42 all its components, serial #283471303217395.

43 ///

1 At trial, the government would present the following  
evidence: (1) Western Union wire transfer records; (2) documents  
2 and digital files seized from the defendant and found on computer  
storage media during execution of the search warrant; (3) other  
3 documents belonging to the defendant recovered from other  
sources, including financial institutions and public trash  
4 receptacles; (4) records from the web sites for the fictitious  
banks; (5) documents in the possession of scheme victims; and (6)  
5 the testimony of law enforcement officers and victims. If all  
victims were called to testify at trial, the government could  
6 present evidence of actual losses in excess of \$2.1 million.



UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

**FILED**

--oOo--

DEC 11 2003

UNITED STATES OF AMERICA,  
Plaintiff,

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY ak AKS

vs.

CASE NO.: CR S-02-257 *ETG*  
CR S-02-560

ROLAND ADAMS,

Defendant.

*ETG copy*

--oOo--

REPORTER'S TRANSCRIPT ON

TAKING OF PLEA

Monday, August 18, 2003

Held in United States District Court, Eastern District of  
California, before the Honorable Edward J. Garcia, on  
Monday, August 18, 2003, 8:37 a.m.

PLAINTIFF: MCGREGOR W. SCOTT  
United States Attorney  
501 I Street, Suite 10-100  
Sacramento, California 95814  
BY: CAMIL A. SKIPPER, ASSISTANT U.S. ATTORNEY

DEFENDANT: QUIN DENVIR  
FEDERAL DEFENDER  
801 I Street, Third Floor  
Sacramento, California 95814  
BY: MATT BOCHMAN, ASSISTANT FEDERAL DEFENDER

Reported by: Keli Rutherford, CSR No. 10084

DIAMOND COURT REPORTERS

120 I Street, 2nd Floor  
Sacramento, CA 95814  
(916) 498-9288 *67*

EXHIBIT B

1 MONDAY, AUGUST 18, 2003, SACRAMENTO, CALIFORNIA 8:37 A.M.

2 --oOo--

3 THE CLERK: All rise. Court is now in  
4 session. The Honorable Edward J. Garcia presiding. You may  
5 be seated Calling criminal S-02-257 and 02-560, United  
6 States versus Roland Adams.

7 (Pause in proceeding.)

8 MS. SKIPPER: Good morning, your Honor, Camil  
9 Skipper for the United States.

10 THE COURT: Ms. Skipper.

11 MR. BOCHMAN: Good morning. Matthew Bochman  
12 for Mr. Adams, present in custody.

13 THE COURT: Mr. Bochman. This matter is on  
14 calendar for status conference. At the last appearance, at  
15 the request of the Defense, we vacated the scheduled trial  
16 date and put the matter over to today.

17 How do you intend to proceed today, Mr.  
18 Bochman?

19 MR. BOCHMAN: Your Honor, we have handed your  
20 clerk an executed plea agreement.

21 (Pause in proceeding.)

22 THE COURT: As I understand it, this plea  
23 agreement -- in this written plea agreement the Defendant  
24 offers to change his plea to guilty to Count 1, conspiracy  
25 to commit mail and wire fraud, and to Count 7, conspiracy to

1 commit money laundering, and will waive jury trial on Counts  
2 9 and 10, the criminal forfeiture counts.

3 (Pause in proceeding.)

4 THE COURT: The Defendant also agrees to allow  
5 the Government immediate access to and control of the  
6 Internet domain names Afribankcorp.com, Bancofafrica.com,  
7 and Bancofeasterncarribean.com, and finally the Defendant  
8 agrees to waive appeal and collateral attack of the  
9 conviction and sentence.

10 In return, the Government agrees to recommend  
11 that the Defendant be sentenced at the low end of the  
12 guideline range and to not oppose a two-level reduction for  
13 Defendant's acceptance of responsibility, if the probation  
14 officer so recommends, and will move to dismiss Counts 2  
15 through 6 and Count 8 of the indictment.

16 Is that essentially the plea agreement, Ms.  
17 Skipper?

18 MS. SKIPPER: Yes, your Honor.

19 THE COURT: Is that your understanding of the  
20 plea agreement, Mr. Bochman?

21 MR. BOCHMAN: Yes, your Honor.

22 THE COURT: And is that what you want to do,  
23 Mr. Adams, is change your plea to guilty to Count 1 and  
24 Count 7 of the indictment and waive jury trial on Count 9  
25 and Count 10 with those understandings?

1 THE WITNESS: Yes, sir.

2 THE COURT: Before accepting your guilty plea,  
3 there are a number of questions I will ask you to ensure  
4 that it is a valid plea, and I will have you sworn to tell  
5 the truth for that purpose.

6 If you do not understand any of the questions  
7 or at any time wish to consult with your attorney, please  
8 say so, since it is important to a valid plea that you  
9 understand each question before you answer it.

10 Ms. Clerk, please swear the Defendant.

11 THE CLERK: Mr. Adams, you do solemnly swear  
12 you will true answer make to such questions that shall be  
13 put to you touching upon your entry of plea, so help you  
14 God?

15 THE WITNESS: I do.

16 BY THE COURT:

17 Q. Do you understand having been sworn your  
18 answers to my questions shall be subject to the penalty of  
19 perjury or making a false statement if you do not answer  
20 truthfully?

21 A. Yes, I do.

22 Q. I wish to advise you you will be sentenced  
23 under the Federal Sentencing Guidelines. I cannot now  
24 predict what your actual sentence will be.

25 If I accept your pleas of guilty this morning,

1 your case will be referred to the U.S. Probation Office for  
2 a report and recommendation after which I will determine  
3 your sentence. Until I receive that report, I simply don't  
4 know enough about you, your background, or the details and  
5 circumstances of the offenses to which you are offering to  
6 plead guilty to predict what your actual sentence might be.

7 Therefore, I advise you that if you plead  
8 guilty, you may be sentenced to a term higher than your  
9 attorney may be predicting or to the maximum term, and if  
10 your attorney is making a mistake in guideline computations,  
11 that will not form a basis for you to withdraw your guilty  
12 plea.

13 Do you understand that?

14 A. Yes, sir.

15 Q. Also, these agreements by the Government in  
16 return for your pleas of guilty <sup>are but</sup> ~~but are~~ recommendations  
17 only. They are not binding on the Court, and I may still  
18 sentence you to a higher or to a maximum term. And if I  
19 decide to impose a more severe sentence than that being  
20 recommended by the U.S. Attorney and your attorney, you will  
21 not be entitled to withdraw your guilty plea.

22 Do you understand that?

23 A. Yes, sir.

24 Q. How old are you, Mr. Adams?

25 A. I'm thirty-seven.

1 Q. How far did you go in school?

2 A. I have a bachelors degree in political science  
3 and political administration.

4 Q. That's more than twelve years of education?

5 A. Yes, sir.

6 Q. Do you understand what's happening here this  
7 morning?

8 A. Yes, sir.

9 Q. Are you presently under the influence of  
10 alcohol or any drug or narcotic?

11 A. No, sir.

12 THE COURT: Counsel, do either of you have any  
13 doubt to the Defendant's competence to plead at this time?

14 Mr. Bochman?

15 MR. BOCHMAN: No, your Honor.

16 THE COURT: Ms. Skipper?

17 MS. SKIPPER: No, your Honor.

18 THE COURT: I find the Defendant is competent  
19 to plead at this time.

20 BY THE COURT:

21 Q. Have you had enough time now, Mr. Adams, to  
22 discuss your case and your plea of guilty with your  
23 attorney?

24 A. Yes, sir.

25 Q. Are you satisfied with your attorney's



1 representation?

2 A. Yes, sir.

3 Q. Let me read to you the charges that you are  
4 offering to plead guilty to.

5 (Pause in proceeding.)

6 BY THE COURT:

7 Q. You are charged in Count 1 of the indictment  
8 with a violation of Section 371 of Title 18 U.S. Code,  
9 conspiracy to commit mail fraud and wire fraud.

10 Specifically the grand jury charges that you,  
11 at all times relevant to this indictment, were an individual  
12 who resided in the Sacramento, California, area; that you  
13 maintained a business office in the name of Adams Business  
14 Services at 926 J Street, Sacramento, California, and that  
15 at all times relevant to the indictment you were associated  
16 with persons who lived and resided in Nigeria, in the  
17 Johannesburg area of South Africa, and the Toronto area of  
18 Canada; and that no later than approximately February 26th,  
19 2001, with the assistance of others, you began operating an  
20 advance fee scheme in which you defrauded victims from  
21 around the world.

22 The scheme was perpetrated, in part, through  
23 the mailing of solicitations letters from officials of  
24 African government or government agencies. According to  
25 solicitation letters, the assistance of the recipients was



1 sought in diverting large sums of money for the private use  
2 of the African officials or their associates.

3 In exchange for the recipient's agreement to  
4 receive the diverted funds and forward the proceeds to an  
5 official, the recipients were promised a substantial portion  
6 of the diverted funds. The scheme purportedly involved the  
7 transfer of the diverted funds through certain offshore  
8 financial institutions.

9 In order to enhance the scheme's appearance of  
10 legitimacy, you created Internet web sites purportedly  
11 associated with the offshore financial institutions and you  
12 and others represented yourselves to be representatives of  
13 those financial institutions to those who were willing to  
14 transfer large sums of money, the victims, in exchange for  
15 certain advance fee payments.

16 In fact, there were no such financial  
17 institution and the funds obtained from victims were used  
18 for the personal purposes of you and others.

19 Beginning at date no later than approximately  
20 February 26th, 2001, and continuing through June 17, 2002,  
21 in the State and Eastern District of California and  
22 elsewhere, you knowingly combined, conspired, and agreed to  
23 other persons both known and unknown to the grand jury to  
24 devise and intend to devise a scheme and artifice to defraud  
25 numerous victims around the world as described in paragraphs

1 three and four above and to obtain money from them by means  
2 of false and fraudulent pretenses, representations, and  
3 promises and to execute the scheme by, A, causing mail  
4 communications to be delivered by the U.S. Postal Service  
5 and by commercial interstate carriers in violation of Title  
6 18, U.S. Code Section 1341; and B, causing communications to  
7 be transmitted by means of wire in interstate and foreign  
8 commerce in violation of Title 18, U.S. Code Section 1343.

9           The object of the conspiracy was for you and  
10 others to obtain funds from the victims by marketing the  
11 fraudulent advance fee scheme through the mails and over the  
12 Internet and to conceal the identity and location of you and  
13 the other perpetrators of the scheme and in order to  
14 perpetuate and conceal the scheme.

15           In furtherance of the conspiracy, you and your  
16 co-conspirators employed, among others, the following ways  
17 and means, A, you used the mail to advance fee scheme  
18 solicitation letters to numerous potential victims in the  
19 United States and elsewhere to send the letters, invited  
20 recipients to receive payment of millions of dollars in  
21 exchange for recipient's assistance in a scheme to divert  
22 funds under the supervision of certain African government  
23 agencies to the personal use of corrupt African officials.

24           You obtained addresses for that purpose, in  
25 part through purchasing mailing lists from commercial

1 telemarketing businesses.

2           Once a potential victim displayed an interest  
3 in participating in the scheme, you and your  
4 co-conspirators, using aliases, communicated to the victim  
5 that large payments would be made through certain offshore  
6 financial institutions, including Afribank Corp. and Bank of  
7 Africa.

8           It was further represented that funds would be  
9 transferred once certain fees, such as financial institution  
10 fees, legal fees, and other fees were paid.

11           You and your co-conspirators directed victims  
12 to send such fees to addresses in South Africa and Canada,  
13 which locations were represented to be associated with the  
14 financial institutions.

15           In order to enhance the appearance of  
16 legitimacy of the scheme, you created Internet web sites,  
17 including Afribankcorp.com and Bancofafrica.com, which  
18 appeared to be web sites for legitimate foreign banking  
19 institutions.

20           The web sites included a foreign payment bank  
21 verification link. The victims were prompted to enter an  
22 authorization code by which they could access information as  
23 to the amount of money that was purportedly designated for  
24 transfer to that victim upon the payment of certain fees.

25           You and your co-conspirators took steps to

1 enhance the appearance of legitimacy of the institutions  
2 depicted in the web site. You and others responded to email  
3 inquiries to the web sites using other identities and posing  
4 as bank employees.

5           The web site for Afribank Corp. identified an  
6 L.A. office with a Los Angeles telephone number. That  
7 telephone number, in fact, was rented from a voice mail  
8 service and automatically forwarded all calls to Canada  
9 where a co-conspirator, posing as a bank employee, responded  
10 to inquiries.

11           You used a cell phone with a Los Angeles  
12 telephone number that was represented to victims to be a  
13 number associated with the L.A. office of Afribank Corp.

14           You and your co-conspirators used aliases to  
15 communicate by mail, fax, telephone, and electronically by  
16 email with victims around the globe. Aliases used by you  
17 include Peter Brown and Harold Whiteker.

18           You and your co-conspirators used private  
19 mailboxes opened in the name of fictitious aliases as  
20 employees when and for receiving mail in connection with the  
21 scheme.

22           You and your co-conspirators used funds  
23 received from victims to further the scheme and to purchase  
24 goods and services for their personal benefit, including  
25 real property, luxury items, and travel to locations around

1 the world.

2 (Pause in proceeding.)

3 THE COURT: Mr. Bochman, there are some  
4 fifteen overt acts alleged.

5 Will you waive a full reading of the  
6 indictment in that regard?

7 MR. BOCHMAN: Yes, your Honor.

8 THE COURT: I'll read the first two. In  
9 furtherance of the conspiracy and to achieve the objects  
10 thereof, you committed, among others, the following overt  
11 agents in the State and Eastern District of California and  
12 elsewhere: On or about February 26th, 2001, you caused a  
13 private mailbox to be opened at 1731 Howe Avenue,  
14 Sacramento, in the name of Carlita Ford;

15 Two or B: On or about April 5, 2001, using  
16 the name Peter Brown, you caused an application for Internet  
17 web site to be completed at the offices of the Internet  
18 services provider company in Sacramento, California.

19 (Pause in proceeding.)

20 THE COURT: And there are eleven other overt  
21 acts alleged.

22 (Pause in proceeding.)

23 THE COURT: In Count 7 of the indictment --  
24 excuse me, yeah -- Count 7, you are charged with a violation  
25 of Section 1956, subdivision h, of Title 18 U.S. Code,



1 conspiracy to launder money.

2           The grand jury charges in that count, first of  
3 all, repeats all of the allegations contained in paragraphs  
4 one through four of the indictment, which I've just read,  
5 and alleges that beginning no later than March 2001 and  
6 continuing through June 17th, 2002, in the Eastern District  
7 of California and elsewhere, you and others, known and  
8 unknown to the grand jury, did unlawfully and knowingly  
9 conspire, confederate, and agree together and with one  
10 another to knowingly transport, transmit, and transfer and  
11 attempt to transport, transmit, and transfer monetary  
12 instruments to a place in the United States from or through  
13 a place outside the United States with the intent to promote  
14 the carrying on of specified unlawful activity, to wit, wire  
15 fraud and mail fraud;

16           And two, knowing that the monetary instruments  
17 and funds involved in the transportation, transmission, and  
18 transfer represented the proceeds of some form of unlawful  
19 activity and knowing that such transportation, transmission,  
20 and transfer was designed in whole or in part to conceal and  
21 disguise the nature, location, source, ownership, and  
22 control of the proceeds of specified unlawful activity, to  
23 wit, the wire fraud and mail fraud, all of which is in  
24 violation of federal law.

25           The manner and means by which the conspiracy

1 was sought to be accomplished included, among other things,  
2 the following: A, and you and your co-conspirators caused  
3 proceeds of the advance fee scheme to be routed to you in  
4 Sacramento through accounts in Canada and other countries;

5 B, you and your co-conspirators, in order to  
6 further conceal the nature, source, and control of the  
7 proceeds of the advance fee scheme caused proceeds to be  
8 sent to you in various forms, including Canadian money  
9 orders, Western Union money transfers, bank-to-bank wire  
10 transfers, and checks drawn on foreign business bank  
11 accounts;

12 C, you and your co-conspirators, in order to  
13 further conceal the nature, source, and control of the  
14 proceeds of the advance fee scheme, used multiple  
15 transactions to structure the transfer of funds and used  
16 multiple identities and entities to facilitate the transfer  
17 of funds;

18 And D, you deposited funds received as  
19 described above into your business accounts in Sacramento  
20 and used the funds to promote the carrying on of the advance  
21 fee scheme and for other personal purposes.

22 Ms. Skipper, would you please advise the  
23 Defendant of the essential elements of each of the two  
24 charges that you would have to prove at trial beyond a  
25 reasonable doubt to convict the Defendant at jury trial?



1 MS. SKIPPER: Yes, your Honor.

2 With regard to Count 1, the Government would  
3 be required to prove: First, beginning no later than  
4 February 26th, 2001, and ending on or about June 17th, 2002,  
5 there was an agreement between two or more persons to commit  
6 wire fraud and mail fraud;

7 Second, the Defendant became a member of the  
8 conspiracy knowing of at least one of its objects and  
9 intending to help accomplish it;

10 And third, one of the members of the  
11 conspiracy performed at least one overt act for the purpose  
12 of carrying out of the conspiracy.

13 The elements of mail fraud and wire fraud are:  
14 First, the Defendant made up a scheme or plan for obtaining  
15 money by making false statements, with all jurors agreeing  
16 on at least one particular false statement that was made;

17 Second, the Defendant knew that the statements  
18 were false;

19 Third, the statements were material; that is,  
20 they would reasonably influence a person to part with money;

21 Fourth, the Defendant acted with the intent to  
22 defraud;

23 And fifth, the Defendant used or caused to be  
24 used the mails or wires to carry out or attempt to carry out  
25 an essential part of the scheme.

1           The elements of the offense charged in Count 7  
2 are: First, beginning no later than February 26th, 2001,  
3 and ending on or about June 17th, 2002, there was an  
4 agreement between two or more persons to transport or  
5 transmit monetary instruments or funds to a place in the  
6 United States from or through a place outside the United  
7 States;

8           And second, that the Defendant knew that the  
9 monetary instruments and funds involved in the  
10 transportation, transmission, and transfer represented the  
11 proceeds of some form of unlawful activity, and he also knew  
12 that such transportation or transmission was designed, in  
13 whole or in part, to conceal and disguise the nature,  
14 location, and source, ownership and control of the proceeds  
15 of specified unlawful activity; to wit, wire fraud and mail  
16 fraud.

17           THE COURT: Mr. Adams, did you hear and  
18 understand the statement of the prosecutor as to the  
19 essential elements that must be proved to be convicted of  
20 the two offenses you are pleading guilty to?

21           THE WITNESS: Yes, sir.

22           THE COURT: Do you understand the nature of  
23 the charges and what is necessary to constitute guilt of  
24 those offenses?

25           THE WITNESS: Yes, sir.

1 (Pause in proceeding.)

2 THE COURT: Those offenses are punishable as  
3 follows: The maximum penalty on Count 1, conspiracy to  
4 commit mail and wire fraud, is five years imprisonment, a  
5 three year term of supervised release, a fine of up to two  
6 hundred fifty thousand dollars, and a one-hundred-dollar  
7 mandatory special assessment.

8 The maximum term of imprisonment that the  
9 Court can impose on Count 7 is twenty years imprisonment, a  
10 three year term of supervised release, a fine of up to half  
11 a million dollars, and a one-hundred-dollar special  
12 assessment.

13 So on your plea of guilty to both counts, the  
14 aggregate term of imprisonment you expose yourself to is up  
15 to twenty-five years imprisonment, a total fine of up to  
16 seven hundred fifty thousand dollars, a three year term of  
17 supervised release, a two-hundred-dollar mandatory special  
18 assessment, and a two-hundred-dollar mandatory special  
19 assessment.

20 Do you understand the maximum penalties?

21 MS. SKIPPER: Excuse me, your Honor. I would  
22 just note there is an alternative fine provision that  
23 applies to Count 7. It can either be five hundred dollars,  
24 the Court mentioned, or in the alternate not more than twice  
25 the amount of the originally derived property arrived at in

1 the transaction.

2 THE COURT: I understand. That's correct.

3 BY THE COURT:

4 Q. Do you understand that, Mr. Adams?

5 A. Yes, sir.

6 Q. Are you a citizen of the United States, Mr.

7 Adams?

8 A. Yes, sir.

9 Q. Are you presently on parole or probation?

10 A. No, sir.

11 Q. I'm now going to advise you of the  
12 constitutional rights you will be giving up if you plead  
13 guilty.

14 You have a right to plead not guilty and to  
15 stand by your plea of not guilty to these charges.

16 Do you understand that right?

17 A. Yes, sir.

18 Q. You also have the right to a jury trial on the  
19 charges and to be represented by counsel at that trial.

20 Do you understand that right?

21 A. Yes, sir.

22 Q. At your trial you have the right to see and  
23 hear and question the witnesses against you.

24 Do you understand that right?

25 A. Yes, sir.

1 Q. You also have the right to remain silent and  
2 not incriminate yourself.

3 Do you also understand that right?

4 A. Yes, sir.

5 Q. And do you understand that you cannot be  
6 convicted of these charges unless all twelve jurors agreed  
7 on your guilt beyond a reasonable doubt at a trial?

8 Understand that?

9 A. Yes, sir.

10 Q. If I accept your guilty pleas to these charges  
11 this morning, there will be no trial; that is, by pleading  
12 guilty, you are giving up your right to a jury trial, your  
13 right to confront and cross-examine the witnesses against  
14 you, and your right to remain silent and not incriminate  
15 yourself.

16 Do you understand that?

17 A. Yes, sir.

18 Q. Other than what has been said here in open  
19 court or that may appear in your written plea agreement, has  
20 anyone made you any other promises in connection with  
21 penalty or punishment to get you to plead guilty?

22 A. No, sir.

23 Q. Have you or anyone you know been threatened,  
24 in any way, to get you to plead guilty?

25 A. No, sir.

1 Q. In this plea agreement you agree to waive  
2 appeal and collateral attack of your conviction and  
3 sentence.

4 Do you understand these rights?

5 A. Yes, sir.

6 Q. Do you have any questions about the waiver of  
7 appeal and collateral attack?

8 A. No, sir.

9 Q. You've discussed this with your attorney?

10 A. Yes, sir.

11 Q. Do you now knowingly and voluntarily then  
12 waive your rights to appeal and collateral attack of the  
13 conviction and sentence?

14 A. Yes, sir.

15 (Pause in proceeding.)

16 BY THE COURT:

17 Q. What is your plea, then, to the charge in  
18 Count 1 of the indictment, violation of Section 371 of Title  
19 18, U.S. Code, conspiracy to commit mail fraud and wire  
20 fraud as I read it to you, guilty or not guilty?

21 A. Guilty.

22 Q. And what is your plea to the charge in Count 7  
23 of the indictment, violation of Section 1956, subdivision h,  
24 of Title 18, U.S. Code, conspiracy to launder money as I  
25 read it to you, guilty or not guilty?



1           A.       Guilty.

2           Q.       And are you pleading guilty to these two  
3 charges freely and voluntarily with the advice of your  
4 lawyer and, in fact, because you are guilty of these two  
5 offenses?

6           A.       Yes, sir.

7           THE COURT: May I have a brief factual basis  
8 for the pleas, Ms. Skipper?

9           MS. SKIPPER: Yes, your Honor.

10           At all times relevant to conduct alleged in  
11 the indictment, Defendant Roland Adams lived and worked in  
12 Sacramento. He was part of an advance fee fraud scheme that  
13 was perpetrated, in part, through the mailing of  
14 solicitation letters from this district, purportedly from  
15 officials of African governments. In exchange for the  
16 victims' agreement to cooperate in the scheme, they were  
17 promised a substantial portion of the diverted funds.

18           On or about May 7th, 2001, Mr. Adams caused  
19 such a solicitation letter, purportedly from a senior  
20 employee of a South African Ministry of Energy and Mineral  
21 Resources to be mailed from Sacramento to victims in the  
22 state of Washington.

23           Mr. Adams also registered the Internet domain  
24 names Afribankcorp.com, Bancofafrica.com, and  
25 Bancofeasterncarribean.com.

1                   On or about April 5, 2001, Mr. Adams, using  
2 the alias Peter Brown, visited a web site design company in  
3 Sacramento to obtain a designer's professional services to  
4 create the web sites for the fictitious offshore banks.  
5 These web sites were maintained by Mr. Adams.

6                   On or about May 22nd, 2001, he accessed the  
7 Afribankcorp.com web site in an administrator capacity, via  
8 an Internet account opened in the name of Sam Kigali.

9                   The money that was received from victims were  
10 for fees which, in general, were for one percent of the  
11 total fund transfer amount that was promised. As part of  
12 the scheme, victims received instructions for payment of the  
13 fees, as well as updates on the progress of the release by  
14 email. Victims also contacted Afribank using a Los Angeles  
15 area telephone number, calls which were automatically  
16 forwarded to Mr. Adams' mobile telephone.

17                   A portion of the funds and monetary  
18 instruments sent to South Africa, Canada, or bank accounts  
19 around the world for payment using the proceeds of the fraud  
20 scheme were later forwarded by the Defendant's  
21 co-conspirators abroad to Sacramento by Western Union wire  
22 transfer or other means for Adams' personal use.

23                   The transfer transactions involved multiple  
24 wire transfers and private shipments conducted in a manner  
25 so as to conceal the nature of the funds as fraud proceeds

1 and to conceal the origin.

2 Mr. Adams knew the funds and instruments were  
3 proceeds from the fraud scheme and accepted them as payment  
4 for his participation in the fraud scheme. He also knew the  
5 funds were routed in a manner meant to conceal the nature  
6 and origin of the funds.

7 He personally, and through his business, Adams  
8 Business Services, received the funds and monetary  
9 instruments from his co-conspirators abroad and deposited a  
10 large portion of them in a U.S. Bank account numbered  
11 153490192959 in the name of Roland Adams and Adams Business  
12 Services in Sacramento.

13 The web sites were maintained by him using  
14 Sony Vaio laptop, model PCG-9B3L, with hard drive, DVD-Rom,  
15 CD-RW, 3.5 inch floppy drive and all its components, serial  
16 number 283471303217395.

17 If this case were to proceed to trial, in  
18 addition to other evidence, the Government could call  
19 victims to testify at trial, presenting evidence of actual  
20 losses in excess of two point one million dollars.

21 THE COURT: Mr. Adams, did you hear and  
22 understand the statement of the prosecutor for pleas of  
23 guilty?

24 THE WITNESS: Yes, sir.

25 THE COURT: Is that what you did?

1 THE WITNESS: Yes, sir.

2 THE COURT: The Defendant's pleas of guilty  
3 are accepted and judgment of guilty hereby entered. The  
4 Court finds that there is a factual basis for the please of  
5 guilty; that the Defendant understands the nature of the  
6 charges and consequences of the pleas, he understands his  
7 constitutional rights, and that the Defendant's pleas of  
8 guilty were freely and voluntarily made.

9 This matter will now be referred to the U.S.  
10 Probation Office for a report and recommendation.  
11 Sentencing will be postponed about ten weeks for that  
12 purpose.

13 THE CLERK: October 27, your Honor.

14 THE COURT: I'll schedule sentencing for  
15 October 27, '03, at 8:30 a.m., if that date and time is  
16 agreeable with Counsel?

17 MR. BOCHMAN: It's fine, your Honor.

18 MS. SKIPPER: It's fine, your Honor.

19 (Discussion off the record.)

20 THE COURT: When do you want to schedule the  
21 court trial?

22 MR. BOCHMAN: We'd like to have a status -- we  
23 can set the court trial today, if that's what the Government  
24 wants, but I think it will be resolved. I hope to, in any  
25 event.

1                   If we can have status on the 8th, that would  
2 be great, if she wants to.

3                   THE COURT: 8th of what?

4                   MR. BOCHMAN: September, your Honor, and I'm  
5 agreeable to setting a court trial date today too. That's  
6 fine.

7                   THE COURT: We'll set a status conference for  
8 September 8th, '03.

9                   Is that date available, Colleen?

10                  THE CLERK: Yes. That would be at 8:30.

11                  THE COURT: 8:30 a.m. And we'll set the court  
12 trial now.

13                  What date did you want, Ms. Skipper?

14                  MS. SKIPPER: September 22nd, your Honor.

15                  THE COURT: Is that date available?

16                  THE CLERK: Yes, sir.

17                  THE COURT: We'll schedule a court trial for  
18 September 22, '03, commencing at 9:00 a.m., and I'll remind  
19 Counsel that the waiver of jury trial has to be presented in  
20 writing signed by the Defendant.

21                  (Discussion off the record.)

22                  THE COURT: As far as the court trial on Count  
23 9 and Count 10, the Court will continue to find excludable  
24 time up to the date of trial pursuant to local codes T4 and  
25 T2.

1 Is that agreeable, Mr. Bochman?

2 MR. BOCHMAN: Yes, your Honor.

3 THE COURT: Ms. Skipper?

4 MS. SKIPPER: Yes, your Honor.

5 THE COURT: All right. That's the order.

6 Anything further for now?

7 MR. BOCHMAN: Yes, your Honor.

8 THE COURT: Counsel?

9 MR. BOCHMAN: We have the companion case  
10 02-560, I think the number is.

11 THE COURT: Yes. That's been trailing this  
12 lead case.

13 MR. BOCHMAN: I would ask that to continue to  
14 trail, your Honor.

15 THE COURT: Okay. We'll continue that, to put  
16 it on calendar in the event you are able to settle the court  
17 trial?

18 MS. SKIPPER: Yes, your Honor.

19 MR. BOCHMAN: Yes, your Honor.

20 THE COURT: Indictment number 02-560 is  
21 ordered to trail to September 8, '03, and the Court will  
22 find excludable time, T2 and T4 on that trailing indictment  
23 also.

24 Is that agreeable, Ms. Skipper?

25 MS. SKIPPER: Yes, your Honor.



1 THE COURT: Mr. Bochman?

2 MR. BOCHMAN: Yes, your Honor.

3 THE COURT: Thank you, Counsel.

4 MS. SKIPPER: Thank you, your Honor.

5 MR. BOCHMAN: Thank you, your Honor.

6 (Thereupon the proceeding was  
7 adjourned at 9:12 a.m.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA     )  
                                      ) ss.  
COUNTY OF SACRAMENTO    )

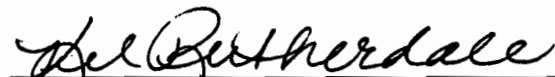
I, KELI RUTHERDALE, a Certified Shorthand  
Reporter licensed by the State of California, and empowered  
to administer oaths and affirmations pursuant to Section  
2093(b) of the Code of Civil Procedure, do hereby certify:

That the said proceedings were recorded  
stenographically by me and were thereafter transcribed by me  
via computer-assisted transcription;

That the foregoing transcript is a true record  
of the proceedings which then and there took place;

That I am a disinterested person to said  
action.

IN WITNESS WHEREOF, I have subscribed my name  
on December 5, 2003.



KELI RUTHERDALE  
Certified Shorthand Reporter #10084

COPY

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

---oOo---

THE UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

ROLAND ADAMS, )

Defendant. )

Case No. CR-S-02-257

----oOo----

HELD BEFORE THE HONORABLE EDWARD J. GARCIA

FRIDAY, APRIL 9, 2004

---oOo---

REPORTED BY: PATRICIA A. HERNANDEZ, CSR #6875

EXHIBIT C

A P P E A R A N C E S

FOR THE PLAINTIFF:

CAMIL SKIPPER  
Deputy Federal Prosecutor  
Department of Justice  
501 I Street  
Sacramento, California 95814

FOR THE DEFENDANT:

RICHARD DANGLER  
Attorney at Law  
P.O. Box 189670  
Sacramento, CA 95818-9670  
(916) 737-3166

1                                ---oOo---

2                                PROCEEDINGS

3                                ---oOo---

4                THE CLERK: Criminal S-02-257 United States versus  
5 Roland Adams.

6                MS. SKIPPER: Good morning, your Honor. Camil  
7 Skipper for the United States.

8                THE COURT: Miss Skipper.

9                MR. DANGLER: Good morning, your Honor. Richard  
10 Dangler for Roland Adams.

11               THE COURT: Mr. Dangler. The record will show that  
12 the Defendant is also present.

13               This matter is on calendar under submission for  
14 decision after hearing on Defendant's motion to withdraw  
15 pleas of guilty. The motion is brought pursuant to  
16 Rule 11 subdivision (d)(2)(B) as in "Baker".

17               Pursuant to a written plea agreement on August 18,  
18 last year, the Court accepted the Defendant's pleas of  
19 guilty to Counts 1 and Count 7 of the indictment and  
20 entered judgment thereon, but has not yet imposed  
21 sentence. Thus, the burden is on Defendant to show a just  
22 and fair reason why the Court should set aside the  
23 judgment of guilt and allow withdrawal of the guilty  
24 pleas.

25               An evidentiary hearing on the motion was held on  
26 March 19 of this year at which Defendant's former  
27 attorney, Matthew Bachman, was called and he testified as  
28 a Defendant's witness. Exhibits were introduced, and the

1 Court stated it would take judicial notice of its own  
2 records of the matter which included, among other things,  
3 the written and signed plea agreement including the  
4 attached factual basis for plea, the reporter's transcript  
5 of the Rule 11 change of plea proceedings, and a letter  
6 that the Defendant wrote the Court on September 21, last  
7 year, about a month after pleading guilty, in which  
8 Defendant accepted full responsibility for his role in the  
9 fraudulent scheme to which he had pled guilty.

10 In his written briefs on the motion, which included  
11 two declarations of the Defendant accusing his attorney,  
12 Mr. Bachman of ineffective assistance of counsel,  
13 Defendant raises several issues in support of his motion  
14 to withdraw pleas. However, at the evidentiary hearing  
15 when the U.S. indicated it would call Defendant's prior  
16 attorney, prior attorneys as witnesses and would also call  
17 the Defendant as a witness to cross-examine him on his  
18 declaration, Defendant withdrew his declarations. Also,  
19 Defendant chose not to testify at the hearing, so that the  
20 sole claim before the Court in support of the motion to  
21 withdraw pleas is Defendant's claim that Mr. Bachman  
22 provided ineffective assistance of counsel in failing to  
23 advise the Defendant that the factual basis for plea could  
24 be used as evidence at the trial of the related  
25 indictment.

26 This related indictment, docket number CR-02-560,  
27 charges Defendant with a violation of Section 1425(a)  
28 of Title 18, unlawful procurement of citizenship or



1 naturalization, and a violation of Section 1001 of  
2 Title 18, false statements. The trial of Defendant on  
3 this indictment is scheduled to commence next Monday.

4 The issue of whether the Court will allow use of  
5 the factual basis for plea, which in essence constitutes  
6 Defendants' ~~admissions to committing~~ <sup>admissions to committing</sup> the crimes charged to which EJC  
7 he pled guilty, is raised in Defendant's in limine motion  
8 on which the Court has not yet ruled.

9 At the evidentiary hearing Mr. Bachman testified  
10 that he did not advise Defendant that a ~~defacto~~ <sup>factual</sup> basis for EJC  
11 the plea could be used as evidence against the Defendant  
12 at the trial of the related indictment, criminal number  
13 02-560, and the Government concedes this factual issue.  
14 Defendant claims this failure to advise constitutes  
15 ineffective assistance of counsel, rendering Defendant's  
16 guilty pleas not knowingly made, and thus involuntary  
17 because Defendant was not made aware of the full  
18 consequences of the pleas of guilty.

19 Defendant also argues that he would have elected to  
20 go to trial had he known the factual basis in the instant  
21 case could be used against him in the trial of the related  
22 case; however, there is no evidence before the Court that  
23 had the Defendant known the factual basis could be used  
24 against him, he would not have pled guilty. Defendant  
25 himself makes no such claim.

26 On the motion to withdraw pleas Defendant cites  
27 the U.S. Supreme Court case of Hill V. Lockhart, and  
28 the Government cites its Ninth Circuit progeny, U.S. v.

1 Baramdyke. These cases apply <sup>the</sup> ~~to~~ Supreme Court teachings  
2 in Strickland v. Washington in determining claims of  
3 ineffective assistance of counsel in motions to withdraw  
4 the plea. These related cases -- excuse me. These cited  
5 cases set forth the legal principle<sup>r</sup> to be applied on the  
6 motion before the Court.

7 A claim of ineffective assistance used to attack  
8 the validity of a guilty plea may be sustained where the  
9 petitioner established that the ineffective performance  
10 affected the outcome of the plea process such that absent  
11 the erroneous advice, he would have insisted on going to  
12 trial; and under Strickland v. Washington, to demonstrate  
13 ineffective assistance of counsel, the Defendant must  
14 satisfy both prongs of the Strickland case: One that  
15 Mr. Bachman's performance fell below <sup>an</sup> ~~the~~ objective  
16 standard of reasonableness in not advising Defendant the  
17 factual basis could be used in the related case, that is,  
18 was his failure to advise outside the range of  
19 professional competent assistance; and two, the second  
20 prong, that there is a reasonable probability that but for  
21 counsel's unprofessional error, the result of the  
22 proceeding would have been different. A reasonable  
23 probability is a probability sufficient to undermine  
24 confidence in the outcome.

25 The Government argues that Defendant fails to  
26 satisfy the first prong of the Strickland case because use  
27 of the factual basis for the plea was a collateral  
28 consequence of the guilty pleas, and there is no legal

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1 duty or requirement to advise the Defendant of such  
2 collateral consequences of the guilty pleas. For this  
3 proposition, the Government cites three Ninth Circuit  
4 cases, U.S. v. Littlejohn, Torrey v. Estelle and  
5 U.S. v. King. These cases stand for the principle that  
6 there is a duty for an attorney to advise Defendant of the  
7 direct consequences of a plea of guilty but not of  
8 collateral consequences. These cases define and  
9 distinguish direct and collateral consequences of guilty  
10 pleas and give examples. The bottom line quote from the  
11 Torrey decision is that failure to advise a client of a  
12 collateral penalty cannot be held to be below an objective  
13 standard of reasonableness.

14 Based on the teachings of the cases cited, I find  
15 that the use of the factual basis in the subsequent trial  
16 is a collateral consequence, and Mr. Bachman's failure to  
17 advise Defendant of it did not constitute ineffective  
18 assistance of counsel.

19 In this regard, I find the Government's argument  
20 persuasive. The U.S. obtained the related indictment for  
21 naturalization fraud before Defendant pled guilty in the  
22 instant case and was prepared to proceed in the related  
23 case with admissions of the Defendant, a conviction in the  
24 instant case after trial and with presentation of the  
25 proofs for the underlying advance fee fraud case.  
26 Whatever the Government's proof, the ultimate decision  
27 will be up to the jury, and thus the use of the factual  
28 basis at the pending trial of the related case is no more

1 than a collateral consequence since it depends on action  
2 by jury and not this sentencing Court. In this  
3 connection, see Littlejohn at page 965.

4 Since the use of the factual basis which  
5 constitutes relevant admissions of an undisclosed crime in  
6 the related case has no bearing or immediate effect on  
7 punishment in the instant case, it's use is not a direct  
8 consequence of Defendant's guilty pleas. In this  
9 connection see Torrey at page 235 which teaches that the  
10 distinction between direct and collateral consequences of  
11 a plea of guilty turns on whether the result represents a  
12 definite, immediate and largely automatic effect on the  
13 range of Defendant's punishment.

14 But even if the failure to advise could be  
15 determined to be a direct consequence of Defendant's  
16 guilty pleas with a duty on Mr. Bachman to have advised  
17 the Defendant the factual basis could be used at the trial  
18 of the related case, Defendant fails to satisfy  
19 Strickland's second prong, prejudice. There is no  
20 evidence before the Court that had the Defendant known the  
21 factual basis could be used against him in the trial of  
22 the related case, he would not have pled guilty.  
23 Defendant himself makes no such claim, having withdrawn his  
24 declarations during the hearing.

25 In this connection see the Supreme Court Hill v.  
26 Lockhart case previously referred to in which the Court  
27 affirmed the Trial Court's denial of habeas relief because  
28 the Petitioner failed to allege in Hill's petition that

1 had counsel correctly informed him about his parole  
2 eligibility date, he would have pleaded not guilty and  
3 insisted on going to trial. The Lockhart case explains  
4 that because of the fundamental interest in the finality  
5 of guilty pleas, prejudice must be shown; that is, that  
6 the attorney's conduct, even if unreasonable, was  
7 prejudicial. This Defendant has failed to do. I find  
8 Defendant has also, therefore, not satisfied Strickland's  
9 second prong.

10 Because of the seriousness of the allegations by  
11 Defendant on this motion, I have carefully reviewed the  
12 reporter's transcript of the Rule 11 change of plea  
13 proceedings and my notes of Mr. Bachman's testimony at the  
14 evidentiary hearing. I note that the written plea  
15 agreement contains a signed statement by Defendant, by  
16 Defendant's then attorney, Mr. Bachman, that he fully  
17 discussed the plea agreement with the Defendant, and that  
18 he concurred with Defendant's decision to plead guilty as  
19 set forth in the agreement.

20 This statement by Mr. Bachman is actually <sup>oath</sup>  
21 corroborated by his uncontradicted testimony under ~~both~~ <sup>ET</sup> at  
22 the evidentiary hearing, and the plea agreement also  
23 contains a signed statement by the Defendant that he  
24 carefully reviewed every part of the plea agreement with  
25 his attorney, and that the Defendant understood it, and  
26 that he voluntarily agreed to it. Defendant also states  
27 in the signed statement, as he did under oath at the  
28 Rule 11 change of plea proceedings, that no other promises



1 or inducements have been made to him other than those  
2 contained in the plea agreement, and that no one  
3 threatened or forced him to enter into the plea agreement.

4 Finally, Defendant states, as he did in open court  
5 under oath when he pled guilty, that he was satisfied with  
6 the representation of his attorney in this case. All of  
7 this is also consistent and corroborative of Mr. Bachman's  
8 testimony at the evidentiary hearing.

9 There is no evidence Mr. Bachman rendered  
10 ineffective assistance of counsel in handling the case and  
11 in recommending Defendant's acceptance of the plea  
12 agreement, and I now find that Defendant's pleas of guilty  
13 were entered into knowingly and voluntarily, with full  
14 knowledge of the consequences of his guilty pleas. Thus,  
15 I find Defendant has failed to show a fair and just reason  
16 why the Court should set aside his judgment of guilty on  
17 Counts 1 and Count 7 of the indictment based on  
18 Defendant's guilty pleas thereto.

19 Defendant's motion to withdraw guilty pleas is now  
20 denied.

21 The U.S. attorney is directed to prepare and submit  
22 a summary order of decision, and it might attach thereto a  
23 reporter's transcript of the Court's analysis of decision.

24 Has a date been set for sentencing in this case,  
25 Miss Skipper?

26 MS. SKIPPER: No, your Honor. I hope that we can  
27 do that today.

28 THE COURT: Is the probation officer in court.

1 PROBATION OFFICER: Yes, your Honor.

2 THE COURT: I don't know how familiar you are with  
3 the case so far.

4 PROBATION OFFICER: I am unfamiliar.

5 THE COURT: How much time do you think you need?

6 PROBATION OFFICER: I would probably suggest the  
7 full --

8 THE COURT: The ten weeks?

9 PROBATION OFFICER: I think so.

10 MS. SKIPPER: Yeah, I had spoken with Miss Wilkins,  
11 your Honor, who is a probation officer, and she does  
12 requested the full ten weeks.

13 THE CLERK: That would be June 18, your Honor.

14 THE COURT: I'll schedule sentencing, then, for  
15 June 18, '04, 10:00 a.m. if that date and time is  
16 agreeable with counsel.

17 MS. SKIPPER: It is, your Honor.

18 MR. DANGLER: Yes, your Honor. Thank you.

19 THE COURT: Before I conclude, I want to note that  
20 Defendant has sent me another letter, an ex parte  
21 communication in an apparent attempt to influence me on  
22 the motion to withdraw pleas. I previously warned  
23 Defendant not to do this. I have ordered the letter  
24 stricken from the clerk's file.

25 Since Defendant is represented by counsel, he is  
26 not entitled to represent himself. See U.S. v. Olano,  
27 62 Fed. 3d 1180 at page 1193, a Ninth Circuit 1994 case.  
28 So long as Defendant is represented by counsel, any

1 documents that the Defendant files on his own behalf will  
2 not be considered.

3 Anything further for now, Miss Skipper?

4 MS. SKIPPER: No, your Honor. Thank you.

5 THE COURT: Mr. Dangler?

6 MR. DANGLER: No, your Honor. Thank you.

7 THE COURT: Can I have a stipulation from counsel  
8 that the exhibits submitted at trial will be returned to  
9 the proponent for preservation for further proceeding?

10 MS. SKIPPER: Yes, your Honor.

11 THE COURT: All right. Anything further,  
12 Mr. Dangler?

13 MR. DANGLER: Nothing.

14 THE COURT: All right. Thank you, counsel.

15 MS. SKIPPER: Thank you.

16 MR. DANGLER: Thank you.

17 ---oOo---

18 [Proceedings in the above-entitled matter concluded.]

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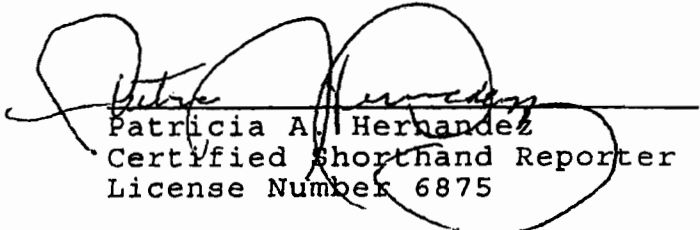
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CERTIFICATE OF SHORTHAND REPORTER

I, Patricia A. Hernandez, a Certified Shorthand Reporter of the State of California, do hereby certify that I am a disinterested person herein; that I reported the foregoing hearing in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, or in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of April, 2004.

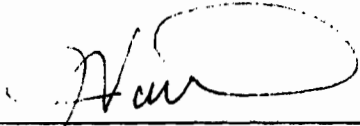
  
Patricia A. Hernandez  
Certified Shorthand Reporter  
License Number 6875

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers; that on April 26, 2004, she served a copy of ORDER DENYING DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEAS by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and its contents in the United States Mail at Sacramento, California.

Addressee(s):

Richard Dangler, Esq.  
3102 "O" St., Ste 21  
Sacramento, CA 95816

  
\_\_\_\_\_  
Jennifer R. Vassell  
Legal Assistant

United States District Court  
for the  
Eastern District of California  
April 28, 2004

\* \* CERTIFICATE OF SERVICE \* \*

2:02-cr-00257

USA

v.

Adams

---

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on April 28, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Camil Antoinette Skipper  
United States Attorney  
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Suite 10-100  
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CL/EJG

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SERVICE BY INTER OFFICE:

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Jack L. Wagner, Clerk

  
by: Deputy Clerk